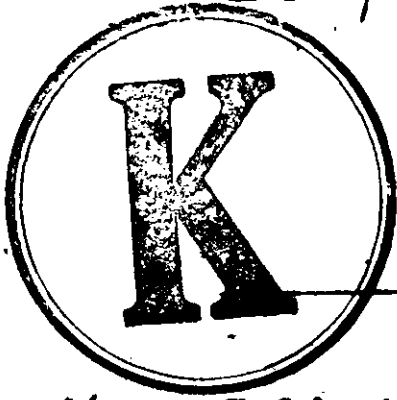


1947

File No. O.Co-op/47



Legal DEPARTMENT
A BRANCH

17.
5/6.

Subject:—

Opinions under the
Bombay Co-operative
Societies Act, 1925

2.4
1-11

File No:

O.Co-op/47

Std. Sectt. Slip 24 B

222-A

C O N T E N T S.

Legal Department File No. O. Coop./47.

Sr. No.	R. I. / O. No.	Subject.	Pages.

		Opinions under the Bombay Co-operative Societies Act, 1925.	
1.	O. No. <u>1463</u> 13.2.47.	Re: Dispute between the Sholapur Central Co-operative Bank Ltd. and one of its members. Reference to arbitration it would be competent for the Registrar of co-operative Societies to set aside the order passed by the Dy. Registrar of K.M. co-operative Societies in his capacity as Chairman of the Board of arbitration and refer the dispute back to arbitration and if that is not possible what course of action should be followed.	1-4.
2.	O. No. <u>1517</u> 14.2.47.	Whether the power of the registrar co-operative Societies under Sec. 64A of the Act includes the power to return a certain case of rehearing.	5-8.
3.	O. No. <u>4085</u> 22.4.47.	Whether the Land Mortgage Bank can be closed as "resource Society" within the meaning of sec.3(h) (1) of the Act.	9-12.
4.	O. No. <u>2507</u> 14.3.47.	Re: Amalgamation of the Surat Land Mortgage Bank with the Surat District Co-operative Bank Ltd. Request to the Dist. Coop. Bank to add to its name the words "Land Mortgage Bank" so that it can enjoy special concessions and privileges granted to the Land Mortgage Bank. Whether amendment of sec.59B of the Coop. Societies Act, and sec.55 of the B.A.D. Relief Act, 1939 would be necessary for the purpose.	13-16.
5.	O. No. <u>3208</u> 2.4.47.	Whether under Sec. 64A of the Bombay Coop. Societies Act, 1925 Govt. has power to modify the award of the arbitration without calling upon the other party, namely the Bank to show cause against such modification; and (2) Whether the action of the Bank in deducting income tax from the amount awarded by the Board of Arbitrators as compensation was legally correct.	17-20.

Sr. No.	R. I. / O. No.	Subject	Pages.
6.	O. No. <u>4276</u> 28.4.47.	Whether copies of the last audit memo prepared by the auditor of the co-operative Deptt. should be supplied to the co-operative stores.	21-22.
7.	O. No. <u>4286</u> 28.4.47.	Re: Reference to Arbitration in respect of the dispute between the co-operative credit society and its Hony. Secy. on account of loss of certain amount from society's cash box.	23-28.
8.	O. No. <u>2310</u> 10.3.47.	(1) Whether a Co-operative society is liable to pay income tax an interest on securities ; (2) Whether its income accruing from dealings with non-members is liable to be assessed to income tax.	29-32.
9.	O. No. <u>5541</u> 29.5.47.	Re: -----Do----- Reconsideration of R.L.A's No. 2310/10.3.47.	33-36.
10.	O. No. <u>6213</u> 15.6.47.	Re: Mysore co-operative societies Act. Amendment of---for the purpose of execution in British India decision or awards passed under the said Act.	33-38.
11.	O. No. <u>9151</u> 12.9.47.	Re: Reserving the right of the coop. society to purchase for nimal bid of auction so held for recovery of its dues as arrears of land revenue.	41-44.
12.	O. No. <u>9563</u> 29.9.47.	Re: Powers of the Registrar delegated to the Additional Registrar of coop. societies.	45-48.
13.	O. No. <u>9175</u> 13.9.47.	Re: Revisional powers of Govt. under sec. 64A of the Bombay coop. societies Act in respect of appeal petition against the Registrar's order.	49-52.
14.	O. No. 11068		

Sr. No.	R. I. / O. No.	Subject	Pages.
14.	O. No. <u>11088</u> 20.11.47	Whether a member of a societies entitled to a copy of the report of an enquiry held under sec.43 (2) of the Act.	53-54.
15.	O. No. <u>10694</u> 7.11.47.	1) Whether the Dy. Registrar could legally entertain an appeal from a fresh award made by arbitrators under sec.54A (3) of the Act; 2) If not whether the order of Dy. Registrar confirming the fresh award will be a nullity and can be questioned; if so, 3) Whether while questioning that order, Govt. can simultaneously refer the fresh award for arbitration once again.	55-58.
16.	O. No. <u>9910</u> 10.10.47.	Question whether in cases where a dispute is referred back to arbitration under sec. 54A(3) of the Act and a fresh award is made any remedy is provided by the Act for the party aggrieved by such fresh award.	59-62.
17.	O. No. <u>10940</u> 18.11.47.	Sec. 54-64A. Re: Arbitration proceedings in respect of contentions matters.	63-66.
18.	O. No. <u>11764</u> 8.12.47.	Question regarding amendment of sec.33 of the Bombay coop.societies Act,1925, in order to give benefit of exemption of stamp duty to H Housing societies.	67-70.
19.	O. No. <u>11557</u> 3.12.47.	Sections 54,54A,57 and 64A. Re: Setting aside of the award by the reconstituted Board of Arbitrators.	71-74.
20.	O. No. <u>12219</u> 20.12.47.	Re: Modification of the Arbitrator's award in part by the Dy. Registrar of coop. Societies.	75-78.
21.	O. No. <u>13537</u> 31.12.47.	Re: cooperative society registered in a Native state-Rights and Privileges under the Bombay coop. societies Act,1925.	79-82.

4/6

It appears that a dispute arose between the Sholapur Central Co-operative Bank Ltd., Sholapur, on the one hand and one of its members Mr. G.V. Daflapur and some officers on the other, in respect of advances made to Mr. Daflapur. The dispute which involved the Bank in a loss of Rs. 18231/13/3 was referred to arbitration under section 54 of the Bombay Co-operative Societies Act, 1925. It was decided by a Board of arbitrators with Mr. H.P. Bhagwat, the Deputy Registrar of Co-operative Societies, as ~~Chairman of the Board~~ Chairman of the Board. The order of the Registrar directing Mr. Bhagwat to decide the case read as under :-

"The Deputy Registrar of Co-operative Societies, should, in exercise of the powers vested in him under section 54 of the Bombay Co-operative Societies Act, 1925, decide the case himself, or if either of the parties so desire, it should be referred to arbitration of three arbitrators who shall be the Deputy Registrar and two persons of whom be nominated by each of the parties concerned."

It appears that the Registrar of Co-operative Societies is not satisfied with the decision of the arbitrators and considers that the order should be set aside and the dispute referred back to arbitration under ~~section 54~~ section 54A of the Bombay Co-operative Societies Act, 1925. The question raised for consideration of the Remembrancer of Legal Affairs is whether it would be competent for the Registrar to set aside the Order and refer the dispute back to arbitration and if that is not possible what course of action should be followed.

2. By Government Notification, Revenue Department, No. 522/28A, dated 31st July 1939 issued under section 4 of the Bombay Co-operative societies Act, 1925, Government have conferred all the powers of a ~~Registrar~~ Registrar on the Deputy Registrar with the exception

~~OF POWERS UNDER SECTION 54~~

of powers under section 64A. Under section 54 the dispute shall be referred to the Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned. A Section 54A, sub-section(1) provides:-

"In the case of any award made by the arbitrators under section 54, the Registrar, if he is not one of such arbitrators, may of his own motion or in the request of any of the parties to the award, for reasons to be recorded in writing, set aside the award and order that the dispute shall be referred back to arbitration in the manner provided under the said section."

application

The words "if he is not one of such arbitrators" in section 54A(1) contemplate cases wherein the Registrar's nominee is appointed as one of the arbitrators under section 54. In the present case Mr. Bhagwat was not appointed as nominee of the Registrar since he was asked to exercise powers vested in him under section 54 read with the aforesaid Notification issued under section 4. Consequently, Mr. Bhagwat, though Deputy Registrar, in exercising powers under section 54, could be deemed to have acted not as nominee of the Registrar but as Registrar. That being the position, the general principle of law that qui facit per alium facit ipse (he who acts through another acts himself) appears to apply in the present case. Consequently the Registrar could be deemed to be one of the arbitrators who decided the dispute in the present case. Section 54A, sub-section (1) will have therefore no application to the present case, and it will not be competent for the Registrar to set aside the award and refer it back to arbitration.

3. Under section 64 of the Bombay Co-operative Societies Act, an appeal against an Order under section 54 may be made by any party aggrieved or affected by the order or decision to the Provincial Government within two months of the date of the communication of the order. It is therefore apparent that an appeal against the order passed by the Board of arbitrators in the present case can lie to Government. Under section 44A the Provincial Government and the Registrar are vested with powers to call for proceedings of subordinate officers and pass orders thereon. No doubt it is true that Mr. Bhagwat, Deputy Registrar, is subordinate to the Registrar and any order passed by him could be revised by the Registrar. But the award has been passed not by Mr. Bhagwat alone but by the Board of arbitrators of whom he was one. The other two arbitrators are not subordinate to the Registrar. Consequently section 64A cannot be invoked in the present case.

Sd/- D.V. Vyas.

Membraneer of Legal Affairs.

U.R. to R.D. No. 1463, dated the 13th February 1947.

Office of the R.L.A.

The power to pass order thereon on reversing the subordinate officer's order under section 54AA of the Bombay Co-operative Societies Act, 1925, includes power to remand the case for rehearing.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.N. to R.D., No. 1517 , dated the 14th February 1947.

V.M.D. /29.5
4c.

Office of the R.L.A.

It is presumed that the object of a land mortgage bank is to obtain for its members the credit required by them. If so, such bank can be classed a "resource society" within the meaning of section 3(h)(1) of the Bombay Co-operative Societies Act, 1925. The view taken by H.M. (F.D.) is correct.

Sd/- P.M.Lad.

22.4

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4085 dated the 22nd April 1947.

V.M.D. /22-5

46.

L.D.R.I. No. 10363 dated 20.11.1946.

Submitted.

Under section 15(1) of the Co-operative Societies Act, 1925, the Registrar of Co-operative Societies, Bombay Province, has allowed the Surat Land Mortgage Bank Ltd., to amalgamate itself with the Surat District Co-operative Bank Ltd. It appears that certain special concessions and privileges have been granted to Land Mortgage Banks and with a view that the Surat Co-operative Bank Ltd. should enjoy those concessions and privileges the Registrar of Co-operative Societies requested the Bank to add to its name the words "Land Mortgage Bank". The Bank is however reluctant to do so. The Registrar hence desires to know whether amendment of section 59-B of the Co-operative Societies Act, 1925 and section 55 of the Agricultural Debtors Relief Act 1939 would be necessary to make available to the Surat District Co-operative Bank the concessions and privileges granted to Land Mortgage Banks and to allow it to carry on the functions of a Land Mortgage Bank under the Agricultural Debtors Relief Act. The Registrar's own view of the matter is contained in his letter at p.53-54 ante. The D.S.R.D.'s view is contained in his note at p.67 ante. The D.S.R.D. wants R.L.A.'s advice in the matter.

According to the explanation to Section 59 -B of the Co-operative Societies Act, 1925, a land mortgage bank means the Bombay Provincial Co-operative Land Mortgage Bank or any other Co-operative land mortgage bank which is registered under this Act and is a member of that bank. There is no other definition of Land Mortgage Bank in the Co-operative Societies Act and the Act nowhere requires that a name of the co-operative Society should be indicative of its nature. In circumstances a co-operative Bank carrying on the business of Land Mortgage banking would be deemed to be a Land Mortgage Bank even though its name does not incorporate the words "Land Mortgage Bank" and such a Bank would automatically be entitled to concessions and privileges conferred upon Land Mortgage Banks. Similarly it will be able to carry out its functions under section 55 of the Agricultural Debtors Relief Act, 1

as in a land Mortgage Bank without having to effect any change in name. If this view is correct no amendments to sections 59B of the Co-operative Societies Act or to section 55 of the Agricultural Debtors Relief Act would be necessary.

Sd/- 10-1

The relevant facts are these .-

The Surat District Co-operative Land Mortgage Bank was Primary Land Mortgage Bank registered in 1935 under the Hon. Co-operative Societies Act, 1925. As the business of this Bank began to decline with a view to avoid any further loss of share capital, it was proposed that it should be merged with the Surat District Central Co-operative Bank. The Registrar, co-operative Societies accordingly discussed the terms and conditions of merged with the management of both the Banks, and it was agreed to have the merger on certain conditions.

The Registrar, Co-operative Societies, requested Govt's approval for the transfer of the business of the Surat Dist. Co-operative Land Mortgage Bank to the Surat. Dist. Central Co-operative Bank, subject to the terms and conditions mentioned therein. In the R.D. letter No. 6576-H/84 dt. 21-²/₄-1944, Govt. approved the proposal of the Registrar regarding merger of the Surat Dist. Co-operative Land Mortgage Bank with the Surat Dist. Central Co-operative Bank, Ltd., and accorded sanction to the transfer of the business of the former to the latter bank subject to the terms and conditions mentioned in the Registrar's letter. After obtaining administrative approval of Govt. to the proposed merger, the Registrar of Co-operative Societies, in exercise of power conferred on him by sub-section (1) of section 15 of the Hon. Co-operative Societies Act, 1925, by his order

Under clause (h) of section 3 of the Bombay Co-operative Societies Act, 1925 the Registrar is required to classify societies under 5 heads namely, (1) a "Resource society," (2) a "Producers' society" (3) a "Consumers' society" (4) a "Housing society" and (5) a "General society". A "General society" means a society not falling in any of the first four classes. Under clause (h) a society formed with the object of facilitating the operations of any one of the above classes of societies shall be classified as a society of that class and a list of all such societies, so classified shall be published annually in the Official Gazette. A society or a bank doing land mortgage business falls under the head (5) and would be deemed to be classified as a general society. There being no separate heading for a land mortgage bank whether primary or Provincial, no special/^{word}nomenclature indicating that the bank is doing that business appears essential under the Act although such nomenclature would indeed be convenient for the purpose of its business. Explanation to section 59B provides that for the purposes of this section a land mortgage bank means the Bombay Provincial Co-operative Land Mortgage Bank or any other co-operative land mortgage bank which is registered under this Act and is a member of that bank. As stated above all such banks fall under the head (5) and the question whether it is a Bombay Provincial Co-operative Land Mortgage or any other co-operative land mortgage bank can be determined on the area of its operation and the nature of its business. Consequently it appears that for the purpose of the application of section 59B it does not appear imperative that a bank or a society should bear any name clearly indicating that it is doing land mortgage business. The Bombay Agricultural Debtors Relief Act, 1937 contains no definition of the expressions "Primary Land Mortgage Bank" and "The Provincial Co-operative Land Mortgage Bank" and consequently they will have to be understood in the sense in which they are used in the Bombay Co-operative Societies Act, 1925. That being so, it appears that neither the amendment of the Bombay Co-operative Societies is quite

necessary.

Since the object of the proposed notification is to declare that all Co-operative Societies other than the Bombay Provincial Co-operative Land Mortgage Bank registered under that Act, which are members of the Provincial Bank are Land Mortgage Banks, this is already clearly statutorily provided for in the Explanation to section 59B, and no further action by way of a notification or even by way of a Government Resolution is necessary.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.B.R. to R.D. No. 8507, dated the 14th March 1947.

V.M.D. /89-5
4a.

Office of the R.L.A.

I do not think Government can amend the award of the arbitrators as proposed. The facts of the case briefly stated are as follows :-

It appears that a dispute between the G.I.P. Railway Employees' Co-operative Bank Ltd. Bombay and its employee Mr. B.M. Karanjia was referred to a Board of three Arbitrators under section 54 of the Bombay Co-operative Societies Act, 1925. On the evidence produced the Board of Arbitrators reached a unanimous conclusion that Mr. Karanjia's dismissal from service was wrongful and unjustified. As regards the quantum of damages to be awarded for wrongful dismissal however ^{there} ~~there~~ was difference of opinion between the chairman of the Board of Arbitrators and the Bank's nominee on one hand and Mr. Karanjia's nominee on the other. The chairman and the Bank's nominee who constituted the majority directed that the Bank should pay to Mr. Karanjia Rs. 4968 on account of his salary up to 31.5.1944, Rs. 2100 as special damages and Rs. 2936-3-0 as Provident fund (inclusive of Bank's contribution) up to 17.7.1944. They also directed payment of interest at 6 p.c. till the date of payment and such costs of the arbitration as might be sanctioned by the Registrar. Mr. Karanjia's nominee however submitted a minute of dissent on the question of the quantum of compensation which according to him should be Rs. 30000.

Against this decision of the majority of the Arbitrators, on 22-6-1944 Mr. Karanjia made a petition to the Registrar under section 54-A of the Bombay Co-operative Societies Act, 1925. A similar petition also was made by the Bank. Considering that the award did not fall within the scope of the proviso(b) to section 54A(1), the Registrar did not refer the award as a whole for reconsideration of the Board of Arbitrators and rejected both the petitions on 10.11.1944. Against that order of the Registrar both the Bank and Mr. Karanjia

made revision applications; and after consulting the Registrar Government rejected the Bank's application, but Mr. Karanjia's application is still pending. Accepting the R.L.A.'s advice in his opinion No. 2871, dated 8.4.1946 that the revision application of Mr. Karanjia could be entertained under section 64A, Government proposes to modify the award of the Board of Arbitrators granting Mr. Karanjia some further reliefs. The R.L.A. is requested to advise on the following points :-

- (1) Whether under section 64A of the Bombay Co-operative Societies Act, 1925, Government has power to modify the award without calling upon the other party, namely the Bank to show cause against such modification; and
- (2) Whether the action of the Bank in deducting income tax from the amount awarded by the Board of Arbitrators as compensation was legally correct.

Section 54 of the Bombay Co-operative Societies Act, 1925, provides for referring a dispute to arbitration.

Section 54A(1) lays down:-

In the case of any award made by the arbitrators under section 54, the Registrar, if he is not one of such arbitrators may of his own motion or on the application of any of the parties to the award for reasons to be recorded in writing set aside the award and order that the dispute shall be referred back to arbitration in the manner provided under the said section:

Provided that no such order shall be made --

- (a) after the issue of a certificate under section 59 for the execution of the award, and
- (b) Unless the Registrar is of opinion that--
 - (i) an objection to the legality of the award is apparent on the face of it, or
 - (ii) the award has been vitiated in consequence of corruption or misconduct on the part of any of the arbitrators, or
 - (iii) the award is in any way perverse."

Section 64 A provides :-

19/5

"The Provincial Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case it shall appear to the Provincial Government or the Registrar that any decision or order or proceedings so called for should be modified or annulled or reversed the Provincial Government or the Registrar as the case may be may pass such order thereon as to it or him may seem fit."

The arbitrators appointed under section 54 are not officers subordinate either to the Registrar or to Government. Consequently section 64 A cannot be invoked for the purpose of modifying the award of arbitrators. It would not therefore be competent for Government to modify the award made by the Board of Arbitrators in the present case. Government has no doubt power under section 64 A to revise the order of the Registrar under section 54 A (1) rejecting the petitions of both Mr. Karanjia and the Bank. But even in that case Government cannot do what the Registrar himself was not empowered to do. Under section 54 A(1) the Registrar if satisfied that the award would fall under the proviso (b) could have set aside the award and ordered that the dispute should be referred back to arbitration in the manner provided under section 54. Consequently if Government is satisfied that the order of the Registrar rejecting the petitions of Mr. Karanjia and the Bank was not correct and that the award would fall under the proviso (b) to section 54A(1) Government can set aside the award and refer the dispute back to arbitration.

Section 64A does not provide for any notice to parties. Consequently it is not imperative that Government should give notice to the other party i.e. the Bank to show cause, although such notice is desirable in the interest of justice.

In view of my opinion on the first point, the second point does not survive.

84/- D.V.Vyas.
Remembrancer of Legal Affairs

U.R. to E.D., No. 3208, dated the End April 1947.

Office of the R.L.A.

Government directed the Registrar to investigate whether the audit of the accounts of the Bhil Sewa Mandal Co-operative store by the auditor of the Co-operative Department was properly carried out and to report the result to Government. The Special Auditor, Co-operative Societies has accordingly prepared a test audit memo. And some of the points raised in that memo. are now under investigation by the Police. The question for the consideration of the R.L.A. is whether copies of the test audit memo. Should be supplied to the co-operative store and Mr. Arya against whom the investigation is pending.

2. Under section 22(1) of the Bombay Co-operative Societies Act, 1925 the Registrar shall by himself or by some person authorized by him in writing by general or special order in this behalf audit the accounts of every society once at least in every year. The words "once at least in every year" clearly permit the auditing for the second time in the same year. The special audit was done in the present case by a special auditor on the special order of the Registrar; and the document has been described as Test Audit Memo and not as a mere report. Compare also rule 31(2). Consequently the special audit memo. would fall under rule 16 of the Bombay Co-operative Societies Rules, 1927 read with section 22(1) of the Bombay Co-operative Societies Act and no valid distinction can be made between an ordinary audit memo. and a test audit memo. The question whether it is a public document does not really arise; in respect of inspection and copies, as an audit memorandum, it would be governed by the special provisions of rule 16 of the Bombay Co-operative Societies Rules, 1927 and not by the general provisions contained in the Indian Evidence Act (section 76).

Publicity of the audit, for whatever reason it may have been carried out, is necessary in the interests of healthy administration of societies' affairs; and hence the special privilege given by rule 16. The fact that some of the points raised in the test audit memorandum are even now under the investigation of the Police would not affect that privilege. There is thus no objection to supplying copies of the test audit memorandum to the Store or to Mr. Arya if and when they apply for its inspection and copies.

Sd/- P.M.Lad

26.4

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4276 , dated the 28th April 1947.

M.M.D./39-5

4e.

Office of the R.L.A.

The facts material for our present purposes may be briefly stated as follows. Mr. Jain was the Honorary Secretary of the Government Printing, Publication and 30-8-1943 to 23-2-1943. On 23-9-1943 a sum of Rs 200 was found missing from the cash box of the Society. The Society held Mr. Jain responsible for the loss and asked him to pay the amount. As Mr. Jain denied his liability, the dispute between him and the Society arose which was referred to the Board of Arbitrators under section 54 of the Bombay Co-operative Societies Act, 1925. It appears from the papers that Mr. Jain had himself originally nominated one of the arbitrators and also his successor when that arbitrator resigned. The arbitrators decided the dispute on 23-3-1945, and made an award holding Mr. Jain liable to pay the Society Rs.200 with interest and costs on the ground of his negligence. On 12th April 1945 Mr. Jain appealed to Government; but he was informed on the 17th of July 1945 that he should appeal in the matter to the Registrar of Co-operative Societies first, and if he were dissatisfied with the Registrar's decision he might then approach Government. Mr. Jain then appealed to the Registrar on the 27th August 1945. But in the meantime on the 13th August 1945, the Assistant Registrar of Co-operative Societies had certified the award for execution under section 59 of the Act. Therefore, on 30-11-1945, the Registrar dismissed Mr. Jain's appeal under proviso (a) to section 54A(1) on the ground that the certificate for execution had already been issued. On 6.12.1945 Mr. Jain then appealed to Government.

2. The Secretary, Revenue Department, observes at p. 29 ante:

"The point now is whether Government can entertain an appeal from the Registrar's order under proviso(a) of section 54A(1) under section 64 of the Bombay Co-operative Societies Act and go into the merits of the case and decide the case on merits irrespective of the technical situation that the Assistant Registrar of Co-operative Societies has already certified the award for the execution, the execution of which has been subsequently stayed by Government. If Government can go into the merits of the case, then we can consider this case on merits under section 64. In equity, it would appear that the mere fact that the award was certified for execution need not bar Government from going into the merits of the case. H.M. desired that the point may be examined by the R.L.A."

The R.L.A. is accordingly requested to advise.

3. In the first place it must be pointed out that for what is described above as the technical situation Mr. Jain was himself in no small measure to blame. The award was made on the 23rd of February 1945. Mr. Jain who was working as the Secretary of a Co-operative Society presumably knew the provisions of the Act and must have realized that an appeal against that award could lie only to the Registrar. He should not have appealed direct to Government at that stage. Even before making an appeal to Government Mr. Jain wasted nearly two months; and even after he was informed by Government on the 17th July 1945 to approach the Registrar in appeal he did not bestir himself but waited for a further period of over a month, and allowed the Assistant Registrar in the meantime to give the certificate.

4. The question which arises for determination^a is whether an appeal can be entertained by Government at this stage. The provisions of appeal and revision are contained in section 64 and 64A in Chapter X of the Act. No appeal is provided in section 64 against an order made by the Registrar dismissing an appeal under the proviso to section 54A(1). An appeal is provided

against an order made under section 54 or under sub-section (3) of section 54A. No question arises here of an appeal against any order or decision under section 54; and in that connection it must be repeated that Mr. Jain had not only submitted to arbitration but had even nominated his own arbitrator. Section 54A(3) is not applicable to the facts and consequently the question of an appeal against a decision under that sub-section does not arise. The scheme seems to be that where parties go to arbitration and an award is made, that award is not liable to be called in question in any civil or revenue Court. (Section 57). It is not liable to be upset excepting for certain well-known reasons which are given in section 54A(1) proviso(b). That too can be done before the certificate is given the award section 59. Once the certificate is given the award is deemed to be a decree of a civil court and the intention seems to be that it shall not thereafter be disturbed. The Registrar, therefore, rightly refused to interfere with the award as proviso(a) to section 54A (1) made it incumbent on him to do. After that stage is reached no appeal is contemplated by the Act to any authority not even to the Provincial Government since the award has already assumed the finality of a decree.

5. Nor can the powers of revision under section 64A be usefully invoked in Mr. Jain's favour. That section enables the Provincial Government to call for and examine the record of any inquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. The arbitration

under section 54 cannot be described as an inquiry.

The Act contemplates "inquiries" as such, as for example in Chapter VII. The proceedings of the Registrar in dismissing an appeal under section 54A(1) proviso (a) can no doubt be called for and examined. But no useful purpose would be served by such examination since as said before the Registrar's order was quite legal and proper in the circumstances of the case.

6. The Revenue Department suggestion seems to be that as a matter of substantial justice the propriety of the Registrar's decision dismissing the appeal may be reconsidered on the following grounds. Mr. Jain's appeal to Government on the 12th of April 1945 may itself be treated as an appeal to the Registrar; it would have been so treated had it been forwarded to the Registrar for disposal. In any case even if Government's reply to Mr. Jain dated the 17th of July 1945 had been endorsed to the Registrar the bar of the certificate would not have arisen in his way; for the Assistant Registrar would not have granted a certificate while the dispute was pending in appeal. It is by so holding in their revisional powers, as a matter of special indulgence to Mr. Jain, that Government may under section 64A annul the Registrar's order dismissing the appeal and direct him to rehear it, as if no certificate were given.

7. But this suggestion is not feasible at this stage since a certificate has actually been granted and under section 59(1)(a) it is deemed to be a decree of a civil court. The Society in whose favour the decree is passed would naturally object to the revision of the whole proceedings by Government. Such revision would not be warranted by the terms of section 64A. The Assistant Registrar has not infringed

any rule or committed any irregularity in granting the certificate; and his order too is not, therefore, liable to revision. On the whole I am of opinion that Government would not be justified in interfering in appeal or revision at this stage.

8. Mr. Jain may be left to seek his remedy if so advised by a duly constituted suit for avoiding the decree.

Sd/- P.M.Lad.
25.4
Remembrancer of Legal Affairs.

U.R. to R.D. No. 4286, dated the 28th April 1947.

V.M.D. 30-5
4c.

Office of the R.L.A.

The questions raised for consideration of the R.L.A. are:-

- (1) Whether a Co-operative Society is liable to pay income-tax on interest on the securities, and
- (2) whether its income accruing from dealings with non-members is liable to be assessed to income-tax.

Question (1) .- Section 6 of the Indian Income-tax Act,

1922, provides :-

"Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely:-

- (i) salaries,
- (ii) interest on securities,
- (iii) property,
- (iv) business,
- (v) professional earnings,
- (vi) other sources."

By the Finance Department, C.R. Notification R. Dis. No. 291-I. T/25, dated the 25th August 1925, as amended by Notification No. 26, dated the 25th June 1927, and by Notification No. 35 dated the 20th October 1934, issued under section 60, the profits of any Co-operative Society other than the Sanikatta Salt-owner's Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act IX of 1912, the Bombay Co-operative Societies Act VII of 1925, have been exempted from the income-tax under the Indian Income-tax Act. The Explanation to the aforesaid Notification states :-

"For this purpose the profits of a Co-operative Society shall not be deemed to include any income, profits or gains from -

- (1) investments in (a) securities of the nature referred to in section 8 of the Indian Income-tax Act, or (b) property of the nature referred to in section 7 of that Act,
- (2) dividends, or
- (3) the 'other sources' referred to in section 12 of the Indian Income-tax Act."

Therefore clear that interest on securities held by Co-operative Societies not being part of profits of its business, would be liable to income-tax. (See Advocate General's Opinion No. 25 dated 15.6.1925). The view taken by the Registrar of Co-operative Societies is correct.

Question(2). - As stated above the profits of a Co-operative Society are exempt from the income-tax but not its profits from other sources. Profits of a Co-operative Society mean profits of the business carried on by a Co-operative Society. (See section 10 of the Act). In Smith vs. Anderson (15 Ch. D. 258) Jessel M.R. observed that -

"Where a Company was formed for the purpose of buying a building or leasing a house to be divided into offices and to be let out, but occasionally did the business of selling investments and buying others, it cannot be said to be carrying on a business of buying and selling investments, for, the words 'carry on' imply repetition of series of acts and occasional selling or buying of investments will not therefore amount to carrying on such business.

Under section 3 of the Bombay Co-operative Societies Act, 1925, subject to the provisions contained therein, a Society which has as its object the promotion of economic interest of its members in accordance with Co-operative principles or a Society established with the object of facilitating the operation of such Society, may be registered under this Act with regard to limited liabilities. The Act provides for the rights and liabilities of the members of such Co-operative Societies (See Chapter III). Under section 34(1) except with the general or special sanction of the Registrar, a Society shall not make a loan to any person other than a member. It is therefore apparent that a non-member of a Society has no rights or privilege under the Act and no loan can be made to any such non-member without the general or special sanction of the Registrar. Dealings with a non-member would not therefore constitute part of normal business of a Co-operative Society. Consequently the profits accruing from advances or loans made to non-members would not be the profits of the business of a Co-operative Society but would fall under the

category of " other sources " referred to in section 12 of the Indian Income-tax Act and would therefore be liable to income-tax. The view of the Registrar of Co-operative Societies on this question does not appear to be correct. He may, however, instruct the Co-operative Societies, to press his point before the Income-tax authorities and await their decision.

CC/- D.V.Vyas.
 Remembrancer of Legal Affairs.

U.O.R. to R.D. No. 2310 , dated the 10th March 1947.

V.M.D. /30-5
 40.

The question of the liability of interest on securities held by the Co-operative Societies needs no re-examination; for the position is absolutely clear in law.

The second question resolves itself into an inquiry whether the profits derived by a Co-operative society from its dealings with non-members are profits and gains of business as contemplated by section 6(4) and section 10 or profits from other sources as defined in section 12 of the Indian Income-tax Act. Whether such profits are profits from business would depend upon the nature of business as ~~contemplated by the Act~~ permitted to the Society. Under section 2(3) business includes any trade, ~~business~~ and, as business generally is held to be a much larger word, with more extensive meaning, than trade. Societies are classified into five classes (Section 3(h) of the Bombay Co-operative Societies Act, 1925). Under section 36 of that Act, Consumers, Producers' and Housing Societies may to the extent permitted by their by-laws trade with persons who are not members. To that extent, therefore, dealings with non-members would be part of their normal trade or business, and profits derived from such dealings would more appropriately come under sections 6(4) and 10 of the Indian Income-tax Act. There is no specific provision in the Act permitting the General Society to deal with non-members. The transactions of a Resource Society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the Provincial Government may by rules, prescribe. It seems that no rules have so far been prescribed; and therefore, the Resource Society would be subject to the general restrictions under sections 34-35. Since sections 34 and 35 speak of a Society, they would be equally applicable to a General Society. Under section 34, a Society is not all-

make loans to persons other than members, except with the general or special sanction of the Registrar, and under section 35, a Society can receive deposits and loans from non-members only to such extent and under such conditions as may be prescribed by the rules or by the by-laws of the Society. Excepting to the extent allowed by section 35 and under the special sanction given under section 34, it may not, therefore, be permissible to a Resource Society or to a General Society to deal with non-members, and particularly so for a Resource Society since it is defined to mean a Society formed with the object of obtaining for its members the credit, goods or services required by them. But to the extent sections 34 and 35 permit dealings with non-members, such dealings would be part of the Society's business; and profits derived from such dealings would also be referable to sections 6(4) and 10 and not to section 12. It is, however, impossible to formulate a proposition of universal applicability regarding the liability to income-tax of profits derived by Societies from their dealings with non-members, for, it may be feasible for a Society to combine the features of some or all of the five classes, and the tax liability would depend principally in ~~immense tax~~ ~~profit~~ ~~tax~~ ~~tax~~ ~~tax~~ upon the by-laws and rules. But subject to that qualification, it may be said in general terms that profits derived by Societies from dealings with non-members would not be profits from other sources referred to in section 12 of the Indian Income-tax Act and would, therefore, get the benefit of the exemption granted by the Notification.

Sd/- P.M.Lad.

28.5

Remembrancer of Legal Affairs.

U.R. to R.D., No. 5541, dated the 29th May 1947.

V.M.D. /30-5

4c.

Submitted :

2. The Government of Mysore wish to enter into reciprocal arrangements on lines similar to existing arrangements between British India and the State for the execution of decrees of civil courts in respect of execution of decisions or awards passed under the Mysore Co-operative Societies Act. The Registrar of Co-operative Societies, Poona, states that if orders and awards passed under the Mysore Co-operative Societies Act are given the status of decrees there will be no difficulty in executing them as if they are decrees passed by the courts in British India under Government of India, Foreign and Political Department Notification No. 321-1, dated 15.5.1929. R.D. states that the Mysore Co-operative Societies Act does not contain a provision similar to section 59 of the Bombay Co-operative Societies Act, 1925, and it is for the Mysore Government to amend the Act suitably. That Department propose to explain the position to the Mysore Resident and leave it to the state to move in the matter.

The attention of R.D. is invited to the R.L.A.'s opinion No. 6294 dated 18th June 1947 where it is stated that the principle enunciated by the Chief Justice in his Judgment in F.A. No. 279 of 1932 (i.e. Tundu Dhansing v. Province of Bombay 49 Bom. L.R. 209) may apply to cases of sale for recovery of dues which are merely recoverable as arrears of land revenue and that it would be unjust to reserve the right to bid at an auction in such cases for a price of one rupee. The view taken by the Extra Assistant Judge following the decision of the High Court in Tundu Dhansing v. Province of Bombay is correct and cannot be challenged. As observed by the R.L.A. it would be unjust to reserve the right of the co-operative society to purchase for a nominal bid at an auction sale held for recovery of its dues as arrears of land revenue.

Consequently the question of amending the Bombay *Co-operative Societies Act 1925* for the purpose can be ruled out. If the property cannot be sold for want of bids, section 59A(1) should be resorted to and the property transferred to the Society in the prescribed manner.

If, as observed by the R.L.A., it be unjust to provide for sale for a nominal bid of property for recovery of dues recoverable as arrears of land revenue, the question of validating such sales that have already taken place can also be ruled out. Sales which are more than 12 years old cannot be impugned; but those within 12 years can be challenged in a Court of law and the law must be allowed to take its own course.

Sd/- P.M.Lad.
11-9

Remembrancer of Legal Affairs.

U.R. to R.D. No 9151 , dated the 12th September 1947.

R.I.No.8346 dt. 14.7.47.

Submitted.

2. Please see R.D. note at p. 65 ante. By G.R. R.D. No. 4793/45, dated the 19th May 1947, issued under section 4 of the Bom Coop. Societies Act, 1925, the Govt. conferred on the Additional Registrar of Coop. Societies all the powers of a Registrar under the Act. The Registrar of the Coop. Societies is of the view that the Addl. Registrar should be delegated with all the powers under the Bom. Coop. Societies Rules also. R.D. considers it unnecessary to do so as he would automatically get all the powers of a Registrar under the Rules also which are framed under the Act. The R.L.A. is requested to advise in the matter.

V.M.D. /30-3
4c.

Office of the R.L.A.

In his opinion No. 3208 dated the 2nd April 1947 the Remembrancer of Legal Affairs has held that Government, if satisfied that the order of the Registrar Rejecting the petitions of Mr. Karanjia and the Bank was not correct and that the award would fall under the proviso (b) to section 544(1) can set aside the award and refer the dispute back to ~~xxx~~ arbitration. It appears that Revenue Department has come to the conclusion that the award is perverse.

If so, the whole award is vitiated and Government will have to set aside the award as a whole and refer the whole dispute to fresh arbitration. Consequently Government cannot refer the dispute back to arbitration only in respect of compensation claimed by Mr. Karanjia.

SA/- P.H.Led
12.9.47

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9175, dated the 13th September 1947.

Office of the R.L.A.

The short point raised in this case for the consideration of the R.L.A. is whether a member of a Society is entitled to a copy of the report of an enquiry held under section 43 sub-section (2) of the Bombay Co-operative Societies Act, 1925. Sub-section (1) of section 43 of the Bombay Co-operative Societies Act, 1925 provides for holding an enquiry into the constitution, working and financial condition of a Society. Sub-section (3) requires all officers and members of the Society whose affairs are investigated to furnish such information in their possession whether as the Registrar or the person authorized by the Registrar may require. Section 58 provides for power to enforce the furnishing of such information and clause (d) of section 60 provides penalty ~~affix~~ for disobedience of summons, requisition etc. by an enquiry officer. It appears from these provisions that the enquiry held under section 43 sub-section (1) is in the nature of a public enquiry. However, sub-section (4) of section 43 provides that the result of an enquiry under this section shall be communicated to the Society whose affairs have been investigated. It seems to be the intention of the Legislature that the report need not be communicated to the Society. All that the Society would be entitled to know would be ~~the findings of the enquiry~~. Consequently no report of the enquiry can be furnished to the Society, much less to any member of such Society. Nevertheless, all members of the Society are entitled to a copy of the results of the enquiry which are communicated to the Society itself under sub-section (4) of section 43.

35/- P.H.Lad.
19.11.

Seamanbrancer of Legal Affairs.

G.R. to R.D. No 11068 , dated the 23th November 1947.

Office of the R.L.A.

Re: Jawahar Nagar
Co-operative Housing
Society vs. T.P. Bhagat,
Ltd.,

Bombay Cooperative
Societies Act,

R.L.A.'s Opinions
Nos. 3208, d/S.4.47.
9910, d/10.10.47.

The Jawahar Nagar Co-operative Housing Society Ltd., Alamedaabad, raised a loan with a view to make funds available to its members to enable them to erect buildings. The applicant ~~was~~ Mr. T.P. Bhagat, a member of the Society, applied for a loan of Rs. 6000/- which was sanctioned subject to certain conditions. One of the conditions was that the Secretary was to advance 2/3rds of the cost incurred by the member. Similarly members were to bear a proportionate part of the expense incurred in raising the loan, to pay interest at 6 p.c. on the amount advanced and to pay water-tax etc. The Managing Committee of the Society by its resolution No. C, dated 6.12.42, resolved to recover a penalty of Rs. 10 per month plot from every member who failed to commence the construction of the building from 1.5.43, and finish the work by 31.10.1943. On the report of the society's Engineer that the applicant's construction work deviated from the plan approved by the Society, the construction was stopped and the Society, ~~thereupon~~ recovered from the applicant penalty for non-construction of the work in addition to other charges and the appellant came in arbitration under section 54 of the Bombay Co-operative Societies Act, 1925. The Board of Arbitrators unanimously passed an award on 9.7.1943, upholding the Society's claim except in respect of water-tax, which was reduced to Rs. 20/- from the appellant.

Being dissatisfied with this decision, the appellant submitted a revision application to the Registrar under section 54A of the Act. The Registrar set aside the award on the ground that the decision was perverse so far as levy of interest and penalty were concerned and remitted the dispute for reconsideration by the same Board of Arbitrators. On reconsideration the Board confirmed its previous award.

The appellant submitted an application under

section 54A which was rejected by the Dy. Registrar on 30.6.1945.

He has now made an appeal to Government under section 64A of the Act. The Registrar is convinced that the award is perverse in so far as items of penalty and interest are concerned. Government agrees that the award in respect of penalty above is perverse (p. 96 ante.)

The Deputy Secretary, Revenue Department states as follows :-

"Item(4) is undoubtedly unreasonable and perverse and according to the latest opinion of the R.L.A. the award could be remitted as a whole for reconsideration. There is, however, another point which had escaped me earlier, and that is that, the Deputy Registrar entertained an appeal under section 54A(1) from the reconsidered award. There is no provision apparently in the Bombay Co-operative Societies Act for this second appeal. If that is so, the Deputy Registrar's order confirming the reconsidered award will be a nullity and can be questioned. I am not sure whether while questioning that order, we can simultaneously refer the award for fresh arbitration. If we can, we may do it."

The questions raised for the consideration of the R.L.A. are:-

(1) whether the Deputy Registrar could legally entertain an appeal from a fresh award made by arbitrators under section 54A (2) of the Bombay Co-operative Societies Act, 1925;

(2) If not, whether the order of the Deputy Registrar dated 30.6.45 confirming the fresh award will be a nullity and can be questioned; if so,

(3) Whether while questioning that order, Government can simultaneously refer the fresh award for arbitration once again.

Questions (1) and (2) :- In a recent opinion No. 9910, dated the 10-10-1947, R.L.A. held-

"The Scheme of the enactment seems to be to allow an appeal against the decision of the Registrar's nominee either made under section 54 or under section 54A(3) upon the reference back to arbitration. Awards are placed on a different footing. Sub-section (1) of section 54A authorises the Registrar to set aside the award and refer the dispute back to arbitration only in the case of an award made by the arbitrators

~~Under~~ section 54. No provision, corresponding ~~to that of a decision~~ given by the Registrar's nominee under section 54A(3) has been made for fresh awards made under section 54A(3). The intention perhaps was to put an end to the

process of referring back disputes by re-opening every fresh award. In any case, the statute is silent on this point; and it is difficult, therefore, to allow the Registrar to set aside the award on the general implied ground that after the dispute is referred back to arbitration, for all purposes the dispute would be referable to section 54 and the fresh award would be deemed to be an award under that section. . . . The awards are otherwise given finality under section 37. On the whole, therefore, the correct view to take would be that the Registrar is not authorised to set aside the fresh award which is made under section 54(3)F.

As pointed out above, the awards are placed on a different footing, and the Deputy Registrar had no jurisdiction to entertain an appeal under section 56. The order of the Dy. Registrar dated 30.6.45, confirming the fresh award being without jurisdiction, it is a mere nullity; it is not, therefore, quite necessary to set it aside (cf. 44 Eas. L.R. p.577).

Question 3.- Government is in no doubt in exercise of the power conferred by section 54A cancel the order of the Dy. Registrar; but that does not appear to serve any purpose, for, as pointed out in H.L.A.'s opinion No. 3203, dated 2.4.47, Government cannot get aside the fresh award under section 54A when the Registrar or the Dy. Registrar could not do it. Since the Deputy Registrar's order confirms the fresh award there is no point in setting it aside. That order may be allowed to remain.

Sd/- P.H.Lad.

6.11
Remembrance of Legal Affairs.

U.R. to R.D. No.10894, dated the 7th November 1947.

Office of the R.L.A.

The question referred to the R.L.A. is whether in cases where a dispute is referred back to arbitration under section 54A(3) of the Bombay Co-operative Societies Act, 1925, and a fresh award is made, any remedy is provided by the Act for the party aggrieved by such fresh award. Under section 54A(3), where a dispute is referred back to arbitration under sub-section(1), the arbitrators shall make a fresh award within such time as may be fixed by the Registrar. If the arbitrators fail to make a fresh award within the time so fixed, the Registrar or his nominee shall decide the dispute. Under section 56A, any party aggrieved by any decision of the Registrar's nominee under sub-section(3) of section 54A may appeal to the Registrar, and the Registrar shall decide the appeal himself. The scheme of the enactment seems to be to allow an appeal against the decision of the Registrar's nominee either made under section 54 or under section 54A(3) upon the reference back to arbitration. Awards are placed on a different footing. Sub-section (1) of section 54-A authorises the Registrar to set aside the award and refer the dispute back to arbitration only in the case of an award made by the arbitrators under section 54. No provision, corresponding to that of a decision given by the Registrar's nominee under section 54A(3), has been made for fresh awards made under section 54A(3). The intention perhaps was to put an end to the process of referring back disputes by reopening ~~the same fresh award in circumstances which would~~ ~~therefore, to allow the Registrar to set aside the award on the general implied ground that after the dispute~~

*Every fresh award.
In any case the
statute is silent on
the point, and it is
difficult, therefore,*

is referred back to arbitration, for all purposes the dispute would be relatable to section 54, and the fresh award would be deemed to be an award made under that section. This process of reasoning would not be available in view of the express words "under section 54" in the opening sentence of sub-section (1) of section 54A, when read together with the clear provision regarding making a fresh award contained in sub-section (3) of section 54A. The awards are otherwise given finality under section 57. On the whole, therefore, the correct view to take would be that the Registrar is not authorised to set aside the fresh award which is made under section 54A(3).

54/- P.M.Led.

8.10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9910, dated the 10th October 1947.

V.M.D. /30-5-
4a.

Office of the R.L.A.

Arbitration
proceedings
in respect of
contentions
matters.

Bombay
Co-operative
Societies
Act, 1915 - Secs.
54-54A.

It appears that one Mr. B.M. Karanjia, an ex-employee of the G.I.P. Railway, Co-operative Bank took up a garnisheed notice dated 14th August 1941, in suit No. 763 of 1941 of the Bombay High Court between Mr. B.M. Karanjia and the G.I.P. Rly. Employees Co-operative Bank Ltd. as garnishees. The notice was discharged by the High Court with costs on 25.9.1941. The Court passed an order on the garnishee notice that Mr. Karanjia should pay Rs.135, as costs of the notice to the G.I.P. Rly. Employees Co-operative Bank Ltd. Pursuant to that order Mr. Karanjia forwarded a cheque of Rs 135 on the Bank of India Ltd. to the garnishees i. e. to the G.I.P. Rly. Employees Co-operative Bank Ltd. through Mr. P.M. Wagle, Solicitor, who represented the Bank in the High Court. The cheque was drawn in favour of the Bank and was forwarded by Mr. Wagle to the Bank which in turn endorsed it to Mr. Wagle. Mr. Wagle sent a receipt for the cheque to the Solicitor of Mr. Wagle and Karanjia. Mr. Karanjia it appears was not content with Mr. Wagle's receipt and demanded an official receipt from the Bank itself. The bank was willing to pass a receipt accordingly provided Mr. Karanjia returned the receipt of Mr. Wagle. However Mr. Karanjia did not agree with the bank and claimed a receipt from the bank itself. At his request the dispute was admitted to arbitration under section 54 of the Bombay Co-operative Societies Act, 1925, and Mr. V.K. Chatrapati Advocate was appointed as Registrar's nominee. The Registrar's nominee served the parties with notices on 26.1.45, and both the parties signified their willingness that the dispute be heard and decided by the Board of Arbitrators and also appointed their respective arbitrators. In the meantime the Bank applied to the Registrar to set aside the order of reference to arbitration on the ground that the dispute between the parties was not a dispute within the meaning of section 54 of the Act. The Registrar called for the papers. The

Chairman of the Board of Arbitrators protested against the order of the Registrar calling ~~ex~~ ~~af~~ for the papers on the ground that the Registrar had no powers to interfere when the Board was seized of the matter. However, the Registrar by his order No.ABL- 610, dated 14.6.46, decided that the cause of complaint could not be construed to be a dispute within the meaning of section 54 and set aside the Asstt. Registrar's order dated 20.12.45, under section 64A of the Act. Mr. Karanjia has now petitioned to Government contending that the Registrar's order was ultra vires. Deputy Secretary, Revenue Department, considers that the petitioner's contentions are not substantial and that such petty matter should not be referred to arbitration. H.M. (F.D) is inclined to agree with Dy. Secretary, Revenue Department, but has desired the H.L.A. to advise in the matter.

The main question involved in the present case ~~are~~;

1. Whether the Registrar was right in interfering with the arbitration proceedings set in motion;
2. whether the dispute between the parties in the present case is a dispute within the meaning of section 54 of the Bombay Co-operative Societies Act, 1925.

Section 54 of the Bombay Co-operative Societies Act provides that if there is any dispute touching the business of a society between certain categories of persons enumerated in that section then such a dispute shall be referred to the Registrar of Co-operative Societies for decision by himself or his nominee or if either of the parties so desires to arbitration of three arbitrators, who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned. Section 64 provides for an appeal against an order or decision of the Registrar under section 54. It is therefore apparent that if any reference to arbitration is invalid on the ground that the dispute thus referred for arbitration is not a dispute within the meaning of section 54 ~~unlike~~ the order of reference could certainly be challenged in appeal under section 64. Whether an order of reference is valid or invalid is not a matter for the arbitrators to decide. Under section 64A the Provincial Government and the Registrar are empowered to call for proceedings of subordinate officers and to pass orders thereon. In the present case the

of reference was made by the Asstt. Registrar, an officer subordinate to the Registrar. Consequently the Registrar was competent to set aside the order of the Assistant Registrar referring the dispute to arbitration provided he was satisfied that the dispute referred to arbitration was not a dispute within the meaning of section 54 of the Act and that the arbitrators had not passed their award.

Under section 54 of the Bombay Co-operative Societies Act the dispute which can be referred to arbitration must be one touching the business of a society and arising between the parties enumerated. The question for the consideration is whether the refusal of the Bank to pass a receipt unless Mr. Karanjia surrendered the receipt of Mr. Wagle is a dispute touching the business of the society. Mr. Wagle passed a receipt as solicitor for the Bank. Payment of the amount to Mr. Wagle is payment to the bank itself and that has not been disputed by either party. The absence of any receipt from the bank would prejudicially affect the rights of Mr. Karanjia. Further Mr. Wagle as solicitor of the bank has passed a receipt which could be validly relied upon to prove payment to the bank itself. The word dispute in this context cannot be understood as synonymous with a mere difference of opinion or a mere dissent of two minds regarding any proposition totally unconnected with any justiciable rights. Ordinarily there is a dispute so long as a claim is asserted by one party and denied by the other, be the claim a false or true one or whether it ultimately turns out to be false or true; but in any case it must be a justiciable claim. The difference or dissent in the present case involves no rights of parties which could form the subject-matter of any civil litigation; and it cannot therefore be treated as a dispute. Besides it is doubtful whether it can be said to touch the business of the Society.

No doubt in *G.I.P.Rly. Employees Co-operative Bank Ltd. v. Bhikhaji Karanjia* (45 B.L.R. 676) Mr. Justice Chagla observed:

"I do not think that it would be right to give a restricted meaning to the words 'touching the business of a society' used by the Legislature in sec. 54 of the Act. The word 'business' is a very wide term and certainly it is not synonymous with the object of a society. The expression 'touching the business of a society' would mean affecting the business of a society or relating

to the business of a society".

But it can be maintained that the refusal to pass the receipt does not relate to the business of the bank because payment of money is admitted; and the receipt passed by Mr. Wagle is as good as a receipt passed by the bank itself. The correct mode of passing the receipt has hardly any bearing on the business of the bank, so long as the payment is undisputed, and a valid receipt has in fact been passed. In these circumstances the view taken by the Deputy Secretary, Revenue Department appears to be correct.

Sd/- P.M. ¹⁷/₁₁ ad.

Remembrancer of ¹⁷/₁₁ Legal Affairs.

M.R. to R.D. No 10940 , dated the 18th November 1947.

V.M.D. /31-5
4c.

Under section 33(2) of the Bombay Co-operative Societies Act, 1925, the Government by notification in the Official Gazette may, in the case of any society or class of societies, remit -

(a) the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of a society or by an officer or member and relating to the business of the society, or any class of such instruments or awards of the Registrar or arbitrators under this Act are respectively chargeable;

(b)

By notifications No. 13035/28 dated 9.5.1939 and 9.10.1941 issued under this clause, Government has remitted the payment of stamp-duty and registration fees in respect of instrument executed by or on behalf of a co-operative society or by an officer or member of any society. Under clause (a) of section 23 of the Indian Stamp Act, 1899, in the absence of an agreement to the contrary, the expenses of providing the proper stamp shall be borne by a person drawing, making or executing the instruments mentioned in that clause; and under clause (c), in the case of a conveyance (including a re-conveyance of mortgaged property) by the grantee; in the case of a lease or agreement to lease-by the lessee or intended lessee; and under clause (f), in the case of a certificate of sale-by the purchaser of the property to which such certificate relates. Ordinarily, therefore, if the property is purchased under a conveyance by a co-operative society, the society will have to bear the stamp duty; for, the sale deed is executed by the vendor and not by the society.

2. The question whether the exemption should be made wider so as to exempt from stamp duty sales and leases made in favour of a society is one of policy. The Stamp Act itself contains the exemption in favour

of the Crown where under proviso 1 to section 3, no duty is chargeable in respect of any instrument executed by, or on behalf of, or in favour of, the Crown in cases where but for this exemption the Crown would be liable to pay the duty chargeable in respect of such instrument. There would be no legal objection to an amendment of this kind being made in respect of co-operative societies provided there is sufficient demand from societies for that purpose and provided satisfactory safeguard can be guaranteed that taking advantage about the clause regarding agreement persons executing instruments in favour of a society may not pass on their burden to the society and thus get rid of it to the prejudice of Government revenues.

Sd/- P.M.Lad.

6.12

Remembrances of Legal Affairs.

U.N. to R.D. No. 11764, dated the 8th December 1947.

V.M.D. /31-5
40.

Office of the R.L.A.

Setting aside of the award by the re-constituted Board of Arbitrators:

Bombay Co-operative Societies Act, 1925 sections 54, 54A, 57 and 64A.

In view of the R.L.A.'s opinion No. 9910, dated the 10th October 1947, which was later on followed in his opinion No. 10694, dated the 7.11.1947, the award made

by the reconstituted Board of Arbitrators is final under section 57 of the Bombay Co-operative Societies Act, 1925.

The Deputy Registrar had therefore no power to set aside the award made by the reconstituted Board. The Registrar's order, dated 19.5.1947, setting aside the Deputy Registrar's order 30.10.1945, and allowing the said award to stand is therefore legal and correct. The award being final, Government also cannot go into the merits of either award and interfere with it. The view taken by the Deputy Secretary, Revenue Department in his note dated 25.9.1947, appears to be correct.

Sd/- P.M.Lad.

2.12

Remembrancer of Legal Affairs.

U.R. to R.D.No. 11557 , dated the 3rd December 1947.

V.M.D./31-5

4c.

Office of the R.L.A.

The order of the Deputy Registrar cancelling the award in part is not correct. If the award is to be set aside, it can be done so as a whole. Consequently Government or the Registrar may set aside the order of the Deputy Registrar and, if satisfied that the award is vitiated on any of the grounds mentioned in clause (b) of the proviso to Section 84-A(1) of the Bombay Co-operative Societies Act, 1925, refer the whole dispute for arbitration.

As regards the remarks in paragraph 2 of D.S., R.D.'s note, the correct position under rule 32 of the Bombay Co-operative Societies Rules, 1927, is that, when there are more persons than one on each side, the principal party on each side will have the right to nominate the arbitrator. In such cases the Registrar will decide who is the principal party and his decision shall be final. Where either of the party fails to make a nomination within a period of 15 days, the Registrar may nominate an arbitrator on behalf of such party. If this procedure were followed, no question of accepting the nomination of the ex-Chairman would arise unless the ex-Chairman himself was designated by the Registrar as the principal party. It is not quite clear from the papers whether the procedure under rule 32 was strictly observed; nor is it made clear who was designated as the principal party.

Sd/. P.M.Lad.

19.12

Remembrance of Legal Affairs.

U.R. to R.D. No. 13219, dated 20th December 1947.

Office of the R.L.A.

Co-operative
Society registered
in a Native State-
Rights and Privileges
Under the Bombay
Co-operative
Societies Act.
1925.

Section 69 of the Bombay Co-operative Societies Act, 1925 applies to societies registered in other Provinces. That section will have therefore no application to the Sulxani Cooperative Banking & Society in ~~xxxxxxxxxxxxxxx~~ Ltd. which is registered in Baroda. Consequently the question whether that Society is entitled to rights and privileges under the Bombay Co-operative Societies Act does not arise.

Sd/- P.H.Lad.

30-12

Remembrancer of Legal Affairs

U.R. to R.D. No. 13537. dated the 31st December 1947.

V.M.D. /S1-3
 4c.